

ESTTA Tracking number: **ESTTA541110**

Filing date: **05/31/2013**

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Notice of Opposition

Notice is hereby given that the following party opposes registration of the indicated application.

Opposer Information

Name	Allergan, Inc.		
Entity	Corporation	Citizenship	Delaware
Address	2525 Dupont Drive Irvine, CA 92612 UNITED STATES		

Attorney information	Kenneth L. Wilton Seyfarth Shaw LLP 2029 Century Park East, Suite 3500 Los Angeles, CA 90067-3021 UNITED STATES kwilton@seyfarth.com, hinchey_susan@allergan.com, kelko@seyfarth.com Phone:(310) 277-7200
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Applicant Information

Application No	85840299	Publication date	05/21/2013
Opposition Filing Date	05/31/2013	Opposition Period Ends	06/20/2013
International Registration No.	NONE	International Registration Date	NONE
Applicant	AmorePacific Corporation 181, 2-Ga, Hangang-Ro, Yongsan-Gu Seoul, KOREA, REPUBLIC OF		

Goods/Services Affected by Opposition

Class 003. All goods and services in the class are opposed, namely: Cosmetics, namely, make up, hair shampoo and cosmetic preparations for baths; Cosmetic preparations for skin care, namely, skin lotions, skin cream and balms other than for medical purposes; Dentifrices, namely, tooth pastes and tooth gels; Cosmetics for pet, namely, shampoo for pets

Grounds for Opposition

Priority and likelihood of confusion	Trademark Act section 2(d)
Dilution	Trademark Act section 43(c)

Marks Cited by Opposer as Basis for Opposition

U.S. Registration No.	1692384	Application Date	12/21/1990
Registration Date	06/09/1992	Foreign Priority	NONE

		Date	
Word Mark	BOTOX		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 005. First use: First Use: 1990/09/00 First Use In Commerce: 1992/01/22 pharmaceutical preparations; namely, ophthalmic muscle relaxants		

U.S. Registration No.	1709160	Application Date	02/06/1991
Registration Date	08/18/1992	Foreign Priority Date	NONE
Word Mark	BOTOX		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 005. First use: First Use: 1990/09/00 First Use In Commerce: 1992/01/22 pharmaceutical preparations for the treatment of neurologic disorders		

U.S. Registration No.	2510675	Application Date	01/03/2001
Registration Date	11/20/2001	Foreign Priority Date	NONE
Word Mark	BOTOX		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 005. First use: First Use: 1990/09/30 First Use In Commerce: 1992/01/22 Pharmaceutical preparations for the treatment of neurological disorders, muscle dystonias, smooth muscle disorders, autonomic nerve disorders, headaches, wrinkles, hyperhydrosis, sports injuries, cerebral palsy, spasms, tremors and pain		

Attachments	Notice of Opposition.pdf(504833 bytes)
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Certificate of Service

The undersigned hereby certifies that a copy of this paper has been served upon all parties, at their address record by First Class Mail on this date.

Signature	/Kenneth L. Wilton/
Name	Kenneth L. Wilton
Date	05/31/2013

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

In the Matter of Application Serial No. 85/840,299
Published in the Official Gazette of May 21, 2013

ALLERGAN, INC.,

Opposer,

v.

AMOREPACIFIC CORPORATION,

Applicant.

Opposition No.

NOTICE OF OPPOSITION

Opposer Allergan, Inc. (“Opposer”) believes that it will be damaged by registration of the mark shown in Application Serial No. 85/840,299, and hereby opposes the same. As grounds for opposition, Opposer alleges as follows:

1. Opposer is a corporation organized and existing under the laws of the State of Delaware, with a principal place of business at 2525 Dupont Drive, Irvine, California 92612. Opposer is, and has been, for many years engaged in the manufacture, development, sale and advertising of an extensive array of pharmaceutical, ophthalmic and dermatological products. Since 1990, Opposer has marketed a pharmaceutical product for the therapeutic treatment of neurological disorders and muscle dystonias under the trademark BOTOX[®] (the “BOTOX[®] Mark”) in the United States and globally (the “BOTOX[®] Product”).

2. In or about 1999, Opposer began clinical trials of the BOTOX[®] Product for a cosmetic indication, and shipped the BOTOX[®] Product under the BOTOX[®] Mark during those trials. In 2002, following approval by the United States Food and Drug Administration of the BOTOX[®] Product for the temporary improvement in the appearance of moderate to severe

glabellar lines, Opposer started promoting and marketing its BOTOX[®] Product under the mark BOTOX[®] COSMETIC for that indication (the “BOTOX[®] COSMETIC Mark”). The BOTOX[®] Mark and the BOTOX[®] COSMETIC Mark are referred to herein collectively as the “BOTOX[®] Marks.”

3. Opposer owns all right, title and interest in and to the BOTOX[®] Marks, as well as the following United States registrations of its BOTOX[®] Mark on the Principal Register:

- a) Registration No. 1,692,384 granted June 9, 1992, for the mark BOTOX in International Class 5 for “pharmaceutical preparations; namely, ophthalmic muscle relaxants”;
- b) Registration No. 1,709,160 granted August 18, 1992, for the mark BOTOX in International Class 5 for “pharmaceutical preparations for the treatment of neurologic disorders”;
- c) Registration No. 2,510,675 granted November 20, 2001, for the mark BOTOX in International Class 5 for “pharmaceutical preparations for the treatment of neurological disorders, muscle dystonias, smooth muscle disorders, autonomic nerve disorders, headaches, wrinkles, hyperhydrosis, sports injuries, cerebral palsy, spasms, tremors and pain”.

All of these registrations are valid and subsisting, and all have become incontestable. Copies of current printouts of information from the electronic database records of the USPTO showing the current status and title of these registrations are attached hereto as Exhibit 1 and are incorporated by reference herein as if set forth in full.

4. From a time long prior to the filing of the Application at issue, Opposer has used the BOTOX[®] Mark in commerce in the United States on and in connection with the foregoing

goods, and the BOTOX[®] COSMETIC Mark in commerce in the United States on and in connection with a pharmaceutical preparation for the temporary improvement in the appearance of moderate to severe glabellar lines, for which the marks have become famous. Moreover, by virtue of the excellence of the product sold under the BOTOX[®] Marks, the marks have a valuable reputation.

5. Notwithstanding Opposer's long prior rights in and to the BOTOX[®] Marks, Applicant, on information and belief, on February 7, 2013, filed an application, filed an application for registration of the trademark "LIRIKOS MARINE BOTOXIN CREAM" for "Cosmetics, namely make up, hair shampoo and cosmetic preparations for baths; Cosmetic preparations for skin care, namely skin lotions, skin cream and balms other than for medical purposes; Dentifrices, namely tooth pastes and tooth gels; Cosmetics for pet, namely shampoo for pets" in International Class 3, and the mark was published for opposition in the Trademark Official Gazette of May 21, 2013 (the "Opposed Application").

FIRST CLAIM FOR RELIEF
(Likelihood of Confusion With Registered Mark)

6. Opposer repeats and realleges the allegations in preceding paragraphs 1 through 5, inclusive, as if fully set forth herein.

7. The "LIRIKOS MARINE BOTOXIN CREAM" mark shown in the Opposed Application so resembles Opposer's registered BOTOX[®] Mark as to be likely, when used on or in connection with the goods and services identified in the Opposed Application, to cause confusion, to cause mistake, or to deceive, and Applicant's mark is thus unregistrable under Section 2(d) of the United States Trademark Act, 15 U.S.C. § 1052(d).

8. Opposer will be damaged by registration of the mark shown in the Opposed Application because registration will give Applicant *prima facie* evidence of its ownership of,

and its exclusive nationwide right to use, a mark that is confusingly similar to Opposer's BOTOX® Mark.

SECOND CLAIM FOR RELIEF
(Likelihood of Confusion With Previously-Used Trademarks)

9. Opposer repeats and realleges the allegations in preceding paragraphs 1 through 5, inclusive, as if fully set forth herein.

10. The "LIRIKOS MARINE BOTOXIN CREAM" mark shown in the Opposed Application so resembles Opposer's previously used and not abandoned BOTOX® Marks as to be likely, when used on or in connection with the goods and services identified in the Opposed Application, to cause confusion, to cause mistake, or to deceive, and Applicant's mark is thus unregistrable under Section 2(d) of the United States Trademark Act, 15 U.S.C. § 1052(d).

11. Opposer will be damaged by registration of the mark shown in the Opposed Application because registration will give Applicant *prima facie* evidence of its ownership of, and its exclusive nationwide right to use, a mark that is confusingly similar to Opposer's previously used and not abandoned BOTOX® Marks.

THIRD CLAIM FOR RELIEF
(Likelihood of Dilution With Previously Registered And Used Trademark)

12. Opposer repeats and realleges the allegations in preceding paragraphs 1 through 5, inclusive, as if fully set forth herein.

13. Opposer's BOTOX® Mark is distinctive and famous, and was determined by the Board to be famous at least as early as August 20, 2007.

14. Opposer's BOTOX® Mark was famous long prior to the date of filing of the Opposed Application.

15. The "LIRIKOS MARINE BOTOXIN CREAM" mark shown in the Opposed Application so resembles Opposer's previously used, registered and not abandoned BOTOX®

Mark as to be likely to blur the distinctiveness of Opposer's famous BOTOX[®] Mark and Applicant's mark is thus unregistrable under Section 43(c) of the United States Trademark Act, 15 U.S.C. § 1125(c).

16. Opposer will be damaged by registration of the mark shown in the Opposed Application because registration will give Applicant *prima facie* evidence of its ownership of, and its exclusive nationwide right to use, a mark that is likely to impair the distinctiveness of Opposer's famous BOTOX[®] Mark.

WHEREFORE, Opposer prays for judgment sustaining this opposition and refusing registration to Applicant of the mark shown in the Opposed Application.

Please charge any deficiency or credit any overpayment related to this Opposition to Deposit Account No. 50-2291, and direct all correspondence in connection with this opposition to the undersigned and, in addition, to:

Susan J. Hinchey
Corporate Trademark Manager
ALLERGAN, INC.
2525 Dupont Drive
Irvine, California 92612
E-mail: HINCHEY_SUSAN@ALLERGAN.COM

Respectfully submitted,

SEYFARTH SHAW LLP

Date: May 31, 2013

By: s/ Kenneth L. Wilton
Kenneth L. Wilton
Attorneys for Opposer
ALLERGAN, INC.

2029 Century Park East, Suite 3500
Los Angeles, CA 90067-3021
Telephone: (310) 277-7200
Facsimile: (310) 201-5219

EXHIBIT 1

The USPTO is pleased to report that the TSDR problem with the display of mark images has been resolved. Please clear your individual browser cache prior to accessing TSDR. If you continue to experience technical difficulties, [please email](#).

STATUS	DOCUMENTS	Back to Search	Print
Generated on: This page was generated by TSDR on 2013-05-31 16:00:55 EDT			
Mark: BOTOX		No Image exists for this case.	
US Serial Number: 74126661		Application Filing Date: Dec. 21, 1990	
US Registration Number: 1692384		Registration Date: Jun. 09, 1992	
Register: Principal			
Mark Type: Trademark			
Status: The registration has been renewed.			
Status Date: Feb. 25, 2012			
Publication Date: Jul. 02, 1991		Notice of Allowance Date: Sep. 24, 1991	
▼ Mark Information			
▼ Expand All			
Mark Literal Elements: BOTOX			
Standard Character Claim: No			
Mark Drawing Type: 1 - TYPESET WORD(S) /LETTER(S) /NUMBER(S)			
▼ Goods and Services			
Note:			
The following symbols indicate that the registrant/owner has amended the goods/services:			
<ul style="list-style-type: none"> • Brackets [...] indicate deleted goods/services; • Double parenthesis ((.)) identify any goods/services not claimed in a Section 15 affidavit of • Asterisks *.* identify additional (new) wording in the goods/services. 			
For: pharmaceutical preparations; namely, ophthalmic muscle relaxants			
International Class(es): 005 - Primary Class		U.S Class(es): 018	
Class Status: ACTIVE			
Basis: 1(a)			

EXHIBIT 1

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First Use:	Sep. 1990	Use in Commerce:	Jan. 22, 1992
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▲ Basis Information (Case Level)

▼ Current Owner(s) Information

Owner Name:	ALLERGAN, INC.		
Owner Address:	2525 DUPONT DRIVE IRVINE, CALIFORNIA 92612 UNITED STATES		
Legal Entity Type:	CORPORATION	State or Country Where Organized:	DELAWARE

▲ Attorney/Correspondence Information

▲ Prosecution History

▼ Maintenance Filings or Post Registration Information

Affidavit of Continued Use:	Section 8 - Accepted
Affidavit of Incontestability:	Section 15 - Accepted
Renewal Date:	Jun. 09, 2012

▲ TM Staff and Location Information

▲ Assignment Abstract Of Title Information - Click to Load

▲ Proceedings - Click to Load

The USPTO is pleased to report that the TSDR problem with the display of mark images has been resolved. Please clear your individual browser cache prior to accessing TSDR. If you continue to experience technical difficulties, [please email](#).

STATUS	DOCUMENTS	Back to Search	Print
Generated on: This page was generated by TSDR on 2013-05-31 16:04:07 EDT			
Mark: BOTOX		No Image exists for this case.	
US Serial Number: 74136930		Application Filing Date: Feb. 06, 1991	
US Registration Number: 1709160		Registration Date: Aug. 18, 1992	
Register: Principal			
Mark Type: Trademark			
Status: The registration has been renewed.			
Status Date: Feb. 27, 2012			
Publication Date: Nov. 12, 1991		Notice of Allowance Date: Feb. 04, 1992	
▼ Mark Information			
▼ Expand All			
Mark Literal Elements: BOTOX			
Standard Character Claim: No			
Mark Drawing Type: 1 - TYPESET WORD(S) /LETTER(S) /NUMBER(S)			
▼ Goods and Services			
Note:			
The following symbols indicate that the registrant/owner has amended the goods/services:			
<ul style="list-style-type: none"> • Brackets [...] indicate deleted goods/services; • Double parenthesis ((.)) identify any goods/services not claimed in a Section 15 affidavit of • Asterisks *.* identify additional (new) wording in the goods/services. 			
For: pharmaceutical preparations for the treatment of neurologic disorders			
International Class(es): 005 - Primary Class		U.S Class(es): 018	
Class Status: ACTIVE			
Basis: 1(a)			

EXHIBIT 1

8

First Use:	Sep. 1990	Use in Commerce:	Jan. 22, 1992
▲ Basis Information (Case Level)			
▼ Current Owner(s) Information			
Owner Name:	ALLERGAN, INC.		
Owner Address:	2525 DUPONT DRIVE IRVINE, CALIFORNIA 92612 UNITED STATES		
Legal Entity Type:	CORPORATION	State or Country Where Organized:	DELAWARE
▲ Attorney/Correspondence Information			
▲ Prosecution History			
▼ Maintenance Filings or Post Registration Information			
Affidavit of Continued Use:	Section 8 - Accepted		
Affidavit of Incontestability:	Section 15 - Accepted		
Renewal Date:	Aug. 18, 2012		
▲ TM Staff and Location Information			
▲ Assignment Abstract Of Title Information - Click to Load			
▲ Proceedings - Click to Load			

The USPTO is pleased to report that the TSDR problem with the display of mark images has been resolved. Please clear your individual browser cache prior to accessing TSDR. If you continue to experience technical difficulties, [please email](#).

STATUS	DOCUMENTS	Back to Search	Print
Generated on: This page was generated by TSDR on 2013-05-31 17:24:14 EDT			
Mark: BOTOX			
US Serial Number:	78041618	Application Filing Date:	Jan. 03, 2001
US Registration Number:	2510675	Registration Date:	Nov. 20, 2001
Register:	Principal		
Mark Type:	Trademark		
Status:	The registration has been renewed.		
Status Date:	Jan. 24, 2011		
Publication Date:	Aug. 28, 2001		
▼ Mark Information			
Mark Literal Elements:	BOTOX		
Standard Character Claim:	No ▼ Expand All		
Mark Drawing Type:	1 - TYPESET WORD(S) /LETTER(S) /NUMBER(S)		
▲ Related Properties Information			
▼ Goods and Services			
Note: The following symbols indicate that the registrant/owner has amended the goods/services:			
<ul style="list-style-type: none"> • Brackets [...] indicate deleted goods/services; • Double parenthesis ((...)) identify any goods/services not claimed in a Section 15 affidavit of • Asterisks *..* identify additional (new) wording in the goods/services. 			
For:	Pharmaceutical preparations for the treatment of neurological disorders, muscle dystonias, smooth muscle disorders, autonomic nerve disorders, headaches, wrinkles, hyperhydrosis, sports injuries, cerebral palsy, spasms, tremors and pain		
International Class(es):	005 - Primary Class	U.S Class(es):	006, 018, 044, 046, 051, 052
Class Status:	ACTIVE		
Basis:	1(a)		
First Use:	Sep. 30, 1990	Use in Commerce:	Jan. 22, 1992
▲ Basis Information (Case Level)			
▼ Current Owner(s) Information			
Owner Name:	Allergan, Inc.		
Owner Address:	2525 Dupont Drive Irvine, CALIFORNIA 92612 UNITED STATES		
Legal Entity Type:	CORPORATION	State or Country Where Organized:	DELAWARE

EXHIBIT 1

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▲ Attorney/Correspondence Information**▲ Prosecution History****▼ Maintenance Filings or Post Registration Information****Affidavit of Continued Use:** Section 8 - Accepted**Affidavit of Incontestability:** Section 15 - Accepted**Renewal Date:** Nov. 20, 2011**▲ TM Staff and Location Information****▲ Assignment Abstract Of Title Information - Click to Load****▲ Proceedings - Click to Load**

CERTIFICATE OF SERVICE

I hereby certify that on May 31, 2013, I served this Notice of Opposition on the Applicant by mailing a copy thereof by First Class Mail, postage prepaid, addressed to Applicant's correspondence address of record as follows:

John K Park, Esq.
Park Law Firm
3255 Wilshire Blvd Suite 1110
Los Angeles, CA 90010-1415

s/ Eleanor Elko

Eleanor Elko